

## UNITED STATES DISTRICT COURT

for the

## DISTRICT OF NEVADA

CASE NO. 2:25-cv-00295-CDS-MDC

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CLERK, U.S. DISTRICT COURT DISTRICT OF NEVADA cah	
BY:	DEPUTY

NATIONAL SPECIALTY PHARMACY LLC,

Plaintiff,

v.

MAYBELLINE SANA, an individual

RAYNE BRIDGES, an individual, and

DOES 1 to 49, inclusive,

Defendants.

**DEFENDANT MAYBELLINE SANA'S MOTION TO DISMISS****I. INTRODUCTION**

Defendant Maybelline Sana, appearing Pro Se, respectfully moves this Honorable Court to dismiss Plaintiff's claims under the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1836, for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Plaintiff fails to identify a specific trade secret, fails to allege use in interstate commerce, and lacks standing due to its business closure. As such, the Court should also decline supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337(c)(3).

## **II. ISSUES TO BE DECIDED**

1. Whether Plaintiff has standing to bring this action under DTSA.
2. Whether Plaintiff identified a specific trade secret.
3. Whether Plaintiff established a connection to the alleged trade secrets and interstate commerce.
4. Whether Plaintiff alleged damages exceeding \$75,000 to support federal diversity jurisdiction.
5. Whether Plaintiff's multiple filings in different states constitute forum shopping.

## **III. LEGAL STANDARD**

To state a claim under DTSA, a plaintiff must allege: (1) the existence of a trade secret as defined by 18 U.S.C. § 1839(3); (2) misappropriation as defined by § 1839(5); and (3) that the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce (§ 1836(b)(1)). See *InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 657-58 (9th Cir. 2020).

A trade secret must be defined with sufficient particularity to separate it from general knowledge or vague categories of information. Conclusory allegations or “catchall” labels do not satisfy the DTSA’s pleading requirements. See *InteliClear*, 978 F.3d at 658.

Additionally, under Rule 8 of the Federal Rules of Civil Procedure, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

## **IV. ARGUMENT**

### **A. Plaintiff’s Allegations of Ongoing Harm and Damages Are Contradicted by Its Business Closure**

Plaintiff NSP claims it will 'continue to suffer significant damages and irreparable injury' (Complaint ¶152) and requests 'temporary, preliminary, and permanent injunctive relief' (¶153), as well as damages allegedly 'in excess of \$75,000.00' (¶154, ¶163–164). However, Defendant is informed and believes that Plaintiff is no longer operating as a going business. Under *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs.*, 528 U.S. 167 (2000), a party must demonstrate ongoing or imminent harm to maintain standing. If Plaintiff has ceased operations, it cannot plausibly assert a risk of future harm, a requirement under the DTSA for both injunctive relief and damages.

Additionally, Plaintiff cannot seek injunctive relief when there is no ongoing use of trade secrets. In *Already, LLC v. Nike, Inc.*, 568 U.S. 85 (2013), the Supreme Court held that a claim for injunctive relief is moot where there is no longer a live controversy. If Plaintiff has transferred its operations and trade secrets to an unrelated third party, it cannot claim ongoing misappropriation or irreparable harm.

Finally, Plaintiff's claimed damages 'in excess of \$75,000.00' are unsupported by specific factual allegations. Without proof of ongoing operations or lost business opportunities, Plaintiff's claims are speculative and insufficient to meet the pleading standard under Rule 8 or establish federal jurisdiction under 28 U.S.C. § 1332. See *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210 (2010). A party that does not own the trade secret cannot sue under the DTSA, and speculative harm cannot justify relief. Accordingly, Plaintiff's claims should be dismissed.

## **B. Plaintiff Lacks Standing Under DTSA Due to Business Closure and Loss of Ownership**

Under the Defend Trade Secrets Act (DTSA), only the "owner of a trade secret" may initiate an action for misappropriation. 18 U.S.C. § 1836(b)(1). If Plaintiff National Specialty Pharmacy (NSP) has ceased operations, it may lack the commercial stake necessary to assert a DTSA

claim. In *Friends of the Earth, Inc. v. Laidlaw Env'l. Servs.*, 528 U.S. 167 (2000), the Supreme Court reaffirmed that standing requires an ongoing injury or threat of harm. If NSP is no longer operating and cannot demonstrate current or future commercial use of the alleged trade secrets, the claim should be dismissed for lack of standing.

Additionally, if NSP transferred or shared its alleged trade secrets with another competitor—distinct from the one Defendant was allegedly associated with—it further undermines NSP's ability to assert a claim under DTSA. Courts have held that a plaintiff must retain exclusive ownership of the trade secret to claim misappropriation. See *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210 (2010). Without control or exclusivity over the information, NSP cannot establish legal ownership as required by 18 U.S.C. § 1836(b)(1).

A plaintiff must retain an active business interest in the trade secrets it seeks to protect. If the trade secrets were transferred to another entity or the business ceased operations, the plaintiff lacks a protectable interest. See *Syntel Sterling Best Shores Mauritius Ltd. v. Trizetto Group, Inc.*, 2020 WL 1442915 (S.D.N.Y. Mar. 24, 2020).

Plaintiff cannot demonstrate a real and immediate threat of future harm, which is required for standing. Accordingly, this claim should be dismissed.

### **C. Plaintiff Cannot Claim Vague or Third-Party Information as Trade Secret**

The DTSA protects only trade secrets that the plaintiff owns, controls, and maintains as confidential. In *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210 (2010), the court held that a party may not assert trade secret rights over information originating from third parties or already disclosed to others.

Here, Plaintiff references vendor data, provider relationships, and external contacts, but fails to establish ownership or exclusive control over this information. If any of this data originated with third parties or was shared externally, it cannot qualify as a trade secret under the DTSA. Likewise, if Plaintiff transferred or disclosed the information to another entity or competitor—as alleged—it no longer retains a protectable interest and lacks standing to sue under the DTSA. Courts have already rejected Plaintiff’s DTSA claims for relying on vague and overbroad trade secret descriptions. For example, in *National Specialty Pharmacy, LLC v. Padhye*, No. 5:23-cv-04357-PCP, slip op. at 6 (N.D. Cal. May 16, 2024) (Exhibit B), the court dismissed NSP’s DTSA claim where it listed only generic categories such as “vendor and partner information, proprietary formulas, business processes, pricing strategies, pricing data, marketing methods, other data, computer and software processes and systems …, and more.” The court held these were “catchall” phrases that “do not clearly refer to tangible trade secret material as required” under 18 U.S.C. § 1839(3). Plaintiff repeats the same error here, offering similarly vague descriptions without specificity or proof of ownership.

Under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), legal conclusions must be supported by factual allegations sufficient to state a plausible claim. Plaintiff’s broad categories and lack of detail fall short of this standard and fail to state a claim under Rule 8.

#### **D. No Interstate Commerce Connection**

The DTSA applies only when the alleged trade secret is “related to a product or service used in, or intended for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1). Courts have consistently dismissed DTSA claims where plaintiffs fail to plead this essential jurisdictional element.

In *Gov't Emps. Ins. Co. v. Nealey*, 262 F. Supp. 3d 153, 172 (E.D. Pa. 2017), the court dismissed a DTSA claim because the complaint failed to allege any connection between the trade secrets and interstate commercial activity. Similarly, in *Nat'l Specialty Pharmacy, LLC v. One Way Drug, LLC*, the District of Nevada concluded NSP's claims were "too local" to qualify under the DTSA. The court held that references to federal reimbursement did not satisfy the required interstate nexus. See *One Way Drug*, No. 2:21-cv-01082-JAD-VCF (D. Nev. Sept. 28, 2021) (transcript at 19–21) (Exhibit C).

Plaintiff's vague reference to having operations in California and Tennessee is insufficient to meet the DTSA's jurisdictional requirement. The statute requires that the trade secret be "related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). Courts have held that past or discontinued commercial activity does not establish a present connection to interstate commerce under the DTSA. Here, Plaintiff does not allege that the alleged trade secrets are currently being used—or intended for use—in any out-of-state sales or operations.

As the court also recognized in *One Way Drug*, NSP's failure to demonstrate any commercial link beyond state borders further undermined its DTSA claim. Plaintiff makes the same omission here. Without a demonstrated nexus to interstate commerce, the DTSA does not apply. Accordingly, Plaintiff's federal claim must be dismissed.

#### **E. Damages Are Not Pleaded With Specificity**

To survive a motion to dismiss, a plaintiff must plead more than conclusory statements regarding damages. In *Cognizant Tech. Sols. U.S. Corp. v. McAfee, Inc.*, 2020 WL 3025196 (N.D. Cal. 2020), the court required the plaintiff to specify the basis and measure of damages with sufficient detail.

In this case, Plaintiff broadly alleges damages 'in excess of \$75,000' but provides no basis for this figure, no documentation of losses, no lost contracts or clients, and no explanation of how the value of any trade secret was diminished. If Plaintiff is no longer in business, its alleged damages are even more speculative.

Such vague allegations are insufficient to meet pleading standards under Rule 8 or establish federal jurisdiction under 28 U.S.C. § 1332.

#### **F. Improper Venue and Forum Shopping**

Plaintiff previously filed a similar complaint in the Northern District of California, where the court dismissed the claims against Defendant for lack of personal jurisdiction. Rather than appeal, Plaintiff initiated this new case in Nevada. This conduct constitutes forum shopping—a disfavored litigation tactic intended to obtain a more favorable forum.

Courts have long disapproved of forum shopping. In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), the Supreme Court emphasized that parties should not attempt to manipulate jurisdiction by filing the same or similar claims in multiple forums.

Plaintiff's behavior here strongly indicates improper forum shopping, and the Nevada case should be dismissed.

#### **G. Defendant Did Not Violate the Non-Compete Agreement**

Defendant attaches as Exhibit A a true and correct copy of her At-Will Employment Agreement. This agreement contains a limited non-compete clause which provides:

"I agree that I will not, for a period of 3 years from the date of such termination, engage in any business that is competitive with the Company within a 5-mile radius of any physical location..."

Plaintiff's allegations relate to Defendant's prior employment with Taycann Wellness, a company that operated in a distinct business sector and outside the specified 5-mile geographic restriction outlined in the agreement. Upon information and belief, Plaintiff's principal place of business in Nevada was located at 3022 W. Post Road, Las Vegas, Nevada 89118. Plaintiff has not alleged that Taycann was a direct competitor that Defendant worked for within the restricted geographic scope.

As such, Plaintiff has failed to allege a breach of the non-compete provision. Further, since this alleged conduct underlies or contributes to Plaintiff's DTSA and related claims, those claims are also undermined.

Additionally, non-compete clauses must be interpreted narrowly under Nevada law and cannot be enforced where the employee's new employment does not compete directly with the employer's core business or occurs outside of the stated geographic limits.

Here, Plaintiff has failed to demonstrate that Defendant's previous employment with Taycann Wellness violated the terms of the agreement. Taycann operated in a different sector and was not within the 5-mile restricted radius. The claim of competition is speculative and unsupported.

This undermines Plaintiff's basis for alleging misappropriation or breach of duty as a predicate for the DTSA claim.

#### **H. Plaintiff's Injunctive Relief Request Is Moot**

Plaintiff seeks temporary, preliminary, and permanent injunctive relief. However, Defendant is no longer employed with the alleged competitor (Taycann Wellness). As a result, there is no ongoing conduct for the court to enjoin.

In *Already, LLC v. Nike, Inc.*, 568 U.S. 85 (2013), the Supreme Court found that an injunction is moot when there is no live controversy or ongoing harm. This principle applies here, where the circumstances no longer support equitable relief.

Therefore, Plaintiff's claim for injunctive relief should be dismissed as moot.

### **I. Court Should Decline Supplemental Jurisdiction**

Once the federal DTSA claim is dismissed, the Court should decline to exercise supplemental jurisdiction over any remaining state law claims. Under 28 U.S.C. § 1337(c)(3), federal courts may decline jurisdiction when all federal claims have been dismissed.

In *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988), the Supreme Court endorsed dismissal of state claims in the absence of a valid federal question.

Given the failure of Plaintiff's DTSA claim, this Court should not retain jurisdiction over any state-based causes of action and should dismiss the complaint in full.

### **V. CONCLUSION**

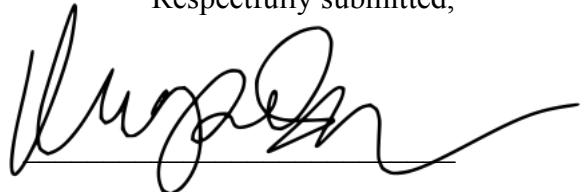
For the foregoing reasons, Defendant respectfully requests that the Court:

1. Dismiss Plaintiff's DTSA claim under Rules 12(b)(1) and 12(b)(6), with prejudice;
2. Dismiss or transfer this case for improper venue;
3. Deny Plaintiff's request for injunctive relief as moot;
4. Decline supplemental jurisdiction over state law claims;
5. Grant such other relief as the Court deems just and proper.

Because Plaintiff's DTSA claim fails on multiple grounds—lack of specificity, ownership, interstate nexus, and standing—dismissal is warranted as a matter of law.

Dated: March 21, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maybelline Sana".

Maybelline Sana

Pro Se Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on March 21, 2025, I caused a true and correct copy of the foregoing DEFENDANT MAYBELLINE SANA'S MOTION TO DISMISS to be served on the following individuals via The Court's electronic filing system:

Attorneys for the Plaintiff

Jennifer W. Arledge ([jarledge@hone.law](mailto:jarledge@hone.law))

Kelly B. Stout ([kstout@hone.law](mailto:kstout@hone.law))

HONE LAW

701 N. Green Valley Parkway, Suite 200

Henderson, NV 89074

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Pro Se

Rayne Bridges ([bridgesrayne@gmail.com](mailto:bridgesrayne@gmail.com))

7340 Jelson Falls Street

Las Vegas, NV 89131

Dated: March 21, 2025



Maybelline Sana

Pro Se Defendant

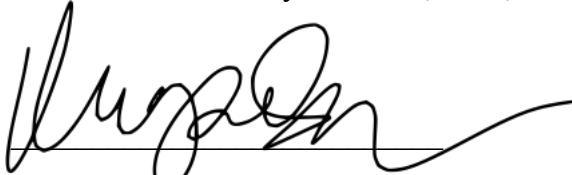
**DECLARATION OF MAYBELLINE SANA**

I, Maybelline Sana, declare as follows:

1. I am the Defendant in the above-captioned matter. I make this declaration in support of my Motion to Dismiss.
2. I have personal knowledge of the facts stated in the Motion to Dismiss, and if called upon to testify, I could and would testify truthfully to those facts.
3. Attached as Exhibit A to my Motion is a true and correct copy of my At-Will Employment Agreement with National Specialty Pharmacy, LLC that I signed on May 21, 2018.
4. The other exhibits attached to my Motion, including the Order in National Specialty Pharmacy, LLC v. Padhye (Exhibit B) and the Transcript in National Specialty Pharmacy, LLC v. One Way Drug, LLC (Exhibit C), are true and correct copies of court documents obtained in those respective matters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21st day of March, 2025, in Las Vegas, Nevada.



Maybelline Sana

### **Index of Exhibits**

Exhibit A - At-Will Employment Agreement between Maybelline Sana and National Specialty Pharmacy,  
LLC

Exhibit B - Order from National Specialty Pharmacy, LLC v. Padhye, No. 5:23-cv-04357-PCP  
(N.D. Cal.  
May 16, 2024)

Exhibit C - Transcript Excerpt from National Specialty Pharmacy, LLC v. One Way Drug, LLC,  
No.  
2:21-cv-01082-JAD-VCF (D. Nev. Sept. 28, 2021)

**EXHIBIT A**

At-Will Employment Agreement between Maybelline Sana and National Specialty Pharmacy,  
LLC

This agreement is cited in support of Defendant's argument that no enforceable non-compete or  
ongoing obligation exists under the Defend Trade Secrets Act (DTSA).

**NATIONAL SPECIALTY PHARMACY, LLC  
AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION,  
AND INVENTION ASSIGNMENT AGREEMENT**

As a condition of my employment with National Specialty Pharmacy, LLC, its subsidiaries, affiliates, successors or assigns (together, the “**Company**”), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by Company, I agree to the following provisions of this National Specialty Pharmacy, LLC At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (this “**Agreement**”):

**1. AT-WILL EMPLOYMENT**

I UNDERSTAND AND ACKNOWLEDGE THAT MY EMPLOYMENT WITH THE COMPANY IS FOR NO SPECIFIED TERM AND CONSTITUTES “AT-WILL” EMPLOYMENT. I ALSO UNDERSTAND THAT ANY REPRESENTATION TO THE CONTRARY IS UNAUTHORIZED AND NOT VALID UNLESS IN WRITING AND SIGNED BY THE AN AUTHORIZED REPRESENTATIVE OF NATIONAL SPECIALTY PHARMACY, LLC ACCORDINGLY, I ACKNOWLEDGE THAT MY EMPLOYMENT RELATIONSHIP MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT GOOD CAUSE OR FOR ANY OR NO CAUSE, AT MY OPTION OR AT THE OPTION OF THE COMPANY, WITH OR WITHOUT NOTICE. I FURTHER ACKNOWLEDGE THAT THE COMPANY MAY MODIFY JOB TITLES, SALARIES, AND BENEFITS FROM TIME TO TIME AS IT DEEMS NECESSARY.

**2. APPLICABILITY TO PAST ACTIVITIES**

National Specialty Pharmacy, LLC and I acknowledge that I have been engaged to provide services by National Specialty Pharmacy, LLC for a period of time prior to the date of this Agreement (the “**Prior Engagement Period**”). Accordingly, I agree that if and to the extent that, during the Prior Engagement Period: (i) I received access to any information from or on behalf of Company that would have been “Company Confidential Information” (as defined below) if I received access to such information during the period of my employment with Company under this Agreement; or (ii) I conceived, created, authored, invented, developed or reduced to practice any item, including any intellectual property rights with respect thereto, that would have been an “Invention” (as defined below) if conceived, created, authored, invented, developed or reduced to practice during the period of my employment with Company under this Agreement; then any such information shall be deemed “Company Confidential Information” hereunder and any such item shall be deemed an “Invention” hereunder, and this Agreement shall apply to such information or item as if conceived, created, authored, invented, developed or reduced to practice under this Agreement.

**3. CONFIDENTIALITY**

A. *Definition of Confidential Information.* I understand that “**Company Confidential Information**” means information (including any and all combinations of individual items of information) that the Company has or will develop, acquire, create, compile, discover or

own, that has value in or to the Company's business which is not generally known and which the Company wishes to maintain as confidential. Company Confidential Information includes both information disclosed by the Company to me, and information developed or learned by me during the course of my employment with Company. Company Confidential Information also includes all information of which the unauthorized disclosure could be detrimental to the interests of Company, whether or not such information is identified as Company Confidential Information. By example, and without limitation, Company Confidential Information includes any and all non-public information that relates to the actual or anticipated business and/or products, research or development of the Company, or to the Company's technical data, trade secrets, or know-how, including, but not limited to, research, product plans, or other information regarding the Company's products or services and markets therefor, customer lists, patient and physician information, and customers (including, but not limited to, customers of the Company on which I called or with which I may become acquainted during the term of my employment), software, developments, inventions, discoveries, ideas, processes, formulas, technology, designs, drawings, hardware configuration information, marketing, finances, and other business information disclosed by the Company either directly or indirectly in writing, orally or by drawings or inspection of premises, parts, equipment, or other Company property. Notwithstanding the foregoing, Company Confidential Information shall not include any such information which I can establish (i) was publicly known or made generally available prior to the time of disclosure by Company to me; (ii) becomes publicly known or made generally available after disclosure by Company to me through no wrongful action or omission by me; or (iii) is in my rightful possession, without confidentiality obligations, at the time of disclosure by Company as shown by my then-contemporaneous written records; provided that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception. I understand that nothing in this Agreement is intended to limit employees' rights to discuss the terms, wages, and working conditions of their employment, as protected by applicable law.

B. *Nonuse and Nondisclosure.* I agree that during and after my employment with the Company, I will hold in the strictest confidence, and take all reasonable precautions to prevent any unauthorized use or disclosure of Company Confidential Information, and I will not (i) use the Company Confidential Information for any purpose whatsoever other than for the benefit of the Company in the course of my employment, or (ii) disclose the Company Confidential Information to any third party without the prior written authorization of an authorized representative of the Company. Prior to disclosure when compelled by applicable law; I shall provide prior written notice to the General Counsel of National Specialty Pharmacy, LLC. I agree that I obtain no title to any Company Confidential Information, and that as between Company and myself, National Specialty Pharmacy, LLC retains all Confidential Information as the sole property of National Specialty Pharmacy, LLC I understand that my unauthorized use or disclosure of Company Confidential Information during my employment may lead to disciplinary action, up to and including immediate termination and legal action by the Company. I understand that my obligations under this **Section 3.B** shall continue after termination of my employment.

C. *Former Employer Confidential Information.* I agree that during my employment with the Company, I will not improperly use, disclose, or induce the Company to use any proprietary information or trade secrets of any former employer or other person or entity with

which I have an obligation to keep in confidence. I further agree that I will not bring onto the Company's premises or transfer onto the Company's technology systems any unpublished document, proprietary information, or trade secrets belonging to any such third party unless disclosure to, and use by, the Company has been consented to in writing by such third party.

D. *Third Party Information.* I recognize that the Company has received and in the future will receive from third parties associated with the Company, e.g., the Company's customers, suppliers, physicians, patients, partners, or collaborators ("Associated Third Parties"), their confidential or proprietary information ("Associated Third Party Confidential Information") subject to a duty under HIPAA and on the Company's part to maintain the confidentiality of such Associated Third Party Confidential Information and to use it only for certain limited purposes. I agree at all times during my employment with the Company and thereafter, that I owe the Company and its Associated Third Parties a duty to hold all such Associated Third Party Confidential Information in the strictest confidence, and not to use it or to disclose it to any person, firm, corporation, or other third party except as necessary in carrying out my work for the Company consistent with the Company's agreement with such Associated Third Parties. I further agree to comply with any and all laws, regulations and Company policies and guidelines that may be adopted from time to time regarding Associated Third Parties and Associated Third Party Confidential Information. I understand that my unauthorized use or disclosure of Associated Third Party Confidential Information or violation of any law, regulation or Company policies during my employment may lead to disciplinary action, up to and including immediate termination and legal action by the Company and the relevant regulatory agencies.

#### 4. OWNERSHIP

A. *Assignment of Inventions.* As between the Company and myself, I agree that all right, title, and interest in and to any and all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries, ideas and trade secrets conceived, discovered, authored, invented, developed or reduced to practice by me, solely or in collaboration with others, during the period of time I am in the employ of the Company (including during my off-duty hours), or with the use of Company's equipment, supplies, facilities, or Company Confidential Information, and any copyrights, patents, trade secrets, mask work rights or other intellectual property rights relating to the foregoing, except as provided in **Section Error! Reference source not found.** below (collectively, "Inventions"), are the sole property of National Specialty Pharmacy, LLC I also agree to promptly make full written disclosure to National Specialty Pharmacy, LLC of any Inventions, and to deliver and assign and hereby irrevocably assign fully to National Specialty Pharmacy, LLC all of my right, title and interest in and to Inventions. I agree that this assignment includes a present conveyance to National Specialty Pharmacy, LLC of ownership of Inventions that are not yet in existence. I further acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. I understand and agree that the decision whether or not to commercialize or market any Inventions is within the Company's sole discretion and for the Company's sole benefit, and that no royalty or other consideration will be due to me as a result of the Company's efforts to commercialize or market any such Inventions.

B. *Pre-Existing Materials.* I will inform National Specialty Pharmacy, LLC in writing before incorporating any inventions, discoveries, ideas, original works of authorship, developments, improvements, trade secrets and other proprietary information or intellectual property rights owned by me or in which I have an interest prior to, or separate from, my employment with the Company (“**Prior Inventions**”) into any Invention or otherwise utilizing any such Prior Invention in the course of my employment with the Company; and the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, transferable worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Inventions, without restriction, including, without limitation, as part of or in connection with such Invention, and to practice any method related thereto. I will not incorporate any inventions, discoveries, ideas, original works of authorship, developments, improvements, trade secrets and other proprietary information or intellectual property rights owned by any third party into any Invention without National Specialty Pharmacy, LLC’s prior written permission. I have attached hereto as Exhibit A, a list describing all Prior Inventions or, if no such list is attached, I represent and warrant that there are no such Prior Inventions. Furthermore, I represent and warrant that if any Prior Inventions are included on Exhibit A, they will not materially affect my ability to perform all obligations under this Agreement.

C. *Moral Rights.* Any assignment to National Specialty Pharmacy, LLC of Inventions includes all rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” “droit moral,” or the like (collectively, “**Moral Rights**”). To the extent that Moral Rights cannot be assigned under applicable law, I hereby waive and agree not to enforce any and all Moral Rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law.

D. *Maintenance of Records.* I agree to keep and maintain adequate, current, accurate, and authentic written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings, electronic files, reports, or any other format that may be specified by the Company. As between Company and myself, the records are and will be available to and remain the sole property of National Specialty Pharmacy, LLC at all times.

E. *Further Assurances.* I agree to assist the Company, or its designee, at the Company’s expense, in every proper way to secure the Company’s rights in the Inventions in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, and all other instruments that the Company shall deem proper or necessary in order to apply for, register, obtain, maintain, defend, and enforce such rights, and in order to deliver, assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to all Inventions, and testifying in a suit or other proceeding relating to such Inventions. I further agree that my obligations under this **Section 4.E** shall continue after the termination of this Agreement.

F. *Attorney-in-Fact.* I agree that, if the Company is unable because of my unavailability, mental or physical incapacity, or for any other reason to secure my signature with respect to any Inventions, including, without limitation, for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to National Specialty Pharmacy, LLC in **Section 4.A**, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and on my behalf to execute and file any papers and oaths, and to do all other lawfully permitted acts with respect to such Inventions to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by me. This power of attorney shall be deemed coupled with an interest, and shall be irrevocable.

## 5. CONFLICTING OBLIGATIONS

A. *Current Obligations.* I agree that during the term of my employment with the Company, I will not engage in or undertake any other employment, occupation, consulting relationship, or commitment that is directly related to the business in which the Company is now involved or becomes involved or has plans to become involved, nor will I engage in any other activities that conflict with my obligations to the Company.

B. *Prior Relationships.* Without limiting **Section 5.A**, I represent and warrant that I have no other agreements, relationships, or commitments to any other person or entity that conflict with the provisions of this Agreement, my obligations to the Company under this Agreement, or my ability to become employed and perform the services for which I am being hired by the Company. I further agree that if I have signed a confidentiality agreement or similar type of agreement with any former employer or other entity, I will comply with the terms of any such agreement to the extent that its terms are lawful under applicable law. I represent and warrant that after undertaking a careful search (including searches of my computers, cell phones, electronic devices, and documents), I have returned all property and confidential information belonging to all prior employers (and/or other third parties I have performed services for in accordance with the terms of my applicable agreement). Moreover, I agree to fully indemnify the Company, its directors, officers, agents, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns for all verdicts, judgments, settlements, and other losses incurred by any of them resulting from my breach of my obligations under any agreement with a third party to which I am a party or obligation to which I am bound, as well as any reasonable attorneys' fees and costs if the plaintiff is the prevailing party in such an action, except as prohibited by law.

## 6. RETURN OF COMPANY MATERIALS

A. *Definition of Electronic Media Equipment and Electronic Media Systems.* I understand that "**Electronic Media Equipment**" includes, but is not limited to, computers, external storage devices, thumb drives, handheld electronic devices, telephone equipment, and other electronic media devices. I understand that "**Electronic Media Systems**" includes, but is not limited to, computer servers, messaging and email systems or accounts, and web-based services (including

cloud-based information storage accounts), whether provided for my use directly by the company or by third-party providers on behalf of the company.

B. *Return of Company Property.* I understand that anything that I created or worked on for the Company while working for the Company belongs solely to the Company and that I cannot remove, retain, or use such information without the Company's express written permission. Accordingly, upon separation from employment with the Company or upon the Company's request at any other time, I will immediately deliver to National Specialty Pharmacy, LLC, and will not keep in my possession, recreate, or deliver to anyone else, any and all Company property, including, but not limited to, Company Confidential Information, Associated Third Party Confidential Information, all Company equipment including all Company Electronic Media Equipment, all tangible embodiments of the Inventions, all electronically stored information and passwords to access such property, Company credit cards, records, data, notes, notebooks, reports, files, proposals, lists, correspondence, specifications, charts, any other documents and property, and reproductions of any of the foregoing items, including, without limitation, those records maintained pursuant to **Section 4.D.**

C. *Return of Company Information on Company Electronic Media Equipment.* In connection with my obligation to return information to the Company, I agree that I will not copy, delete, or alter any information, including personal information voluntarily created or stored, contained upon my Company Electronic Media Equipment before I return the information to the Company.

D. *Return of Company Information on Personal Electronic Media Equipment.* In addition, if I have used any personal Electronic Media Equipment or personal Electronic Media Systems to create, receive, store, review, prepare or transmit any Company information, including but not limited to, Company Confidential Information, I agree to make a prompt and reasonable search for such information in good faith, including reviewing any personal Electronic Media Equipment or personal Electronic Media Systems to locate such information and if I locate such information I agree to notify the Company of that fact and then provide the Company with a computer-useable copy of all such Company information from those equipment and systems; and I agree to cooperate reasonably with the Company to verify that the necessary copying is completed (including upon request providing a sworn declaration confirming the return of property and deletion of information), and, upon confirmation of compliance by the Company, I agree to delete and expunge all Company information.

E. *No Expectation of Privacy in Company Property.* I understand that I have no expectation of privacy in Company property, and I agree that any Company property situated on Company premises, or held by third-party providers for the benefit of the company, is subject to inspection by Company personnel at any time with or without further notice. I also understand and agree that as it relates to the Company's desire to protect its confidential and proprietary information, I have no expectation of privacy as to any personal Electronic Media Equipment or personal Electronic Media Systems that I have used for Company purposes. I further agree that the Company, at its sole discretion, may have access to such personal Electronic Media Equipment or personal Electronic Media Systems to retrieve, destroy, or ensure the permanent deletion of Company information from such equipment or systems. I also consent to an exit interview and an

audit to confirm my compliance with this **Section 6**, and I will certify in writing that I have complied with the requirements of this **Section 6**.

#### **7. TERMINATION CERTIFICATION**

Upon separation from employment with the Company, I agree to immediately sign and deliver to the Company the “Termination Certification” attached hereto as Exhibit C. I also agree to keep National Specialty Pharmacy, LLC advised of my home and business address for a period of three (3) years after termination of my employment with the Company, so that the Company can contact me regarding my continuing obligations provided by this Agreement.

#### **8. NOTIFICATION OF NEW EMPLOYER**

In the event that I leave the employ of the Company, I hereby grant consent to notification by the Company to my new employer about my obligations under this Agreement.

#### **9. SOLICITATION OF EMPLOYEES**

To the fullest extent permitted under applicable law, I agree that during my employment and for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether voluntary or involuntary, with or without cause, I will not directly or indirectly solicit any of the Company’s employees to leave their employment at the Company. I agree that nothing in this **Section 9** shall affect my continuing obligations under this Agreement during and after this twelve (12) month period, including, without limitation, my obligations under **Section 3**.

#### **10. CONFLICT OF INTEREST GUIDELINES**

I agree to diligently adhere to all policies of the Company, including the Company’s insider trading policies and the Company’s Conflict of Interest Guidelines. A copy of the Company’s current Conflict of Interest Guidelines is attached as Exhibit D hereto, but I understand that these Conflict of Interest Guidelines may be revised from time to time during my employment.

#### **11. REPRESENTATIONS**

Without limiting my obligations under **Section 4.E** above, I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent and warrant that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. I hereby represent and warrant that I have not entered into, and I will not enter into, any oral or written agreement in conflict herewith.

#### **12. NON-CIRCUMVENTION, NON-COMPETITION AND NON-SOLICITATION**

I agree that I will not directly or indirectly, individually or together with any other persons, investors, firms or companies (a) interfere with, circumvent, avoid, bypass or obviate, or permit any of its representatives or affiliates to interfere with, circumvent, avoid, bypass or obviate the

Company's (or any of its representatives or affiliates') right in, agreements relating to and/or contacts with respect to any of the Company's current or proposed customers or clients (b) enter into discussions with any third party introduced to me by the Company (or any of such party's members, shareholders, officers, directors, employees, agents, affiliates, creditors or contractual counterparts), or initiate or negotiate with respect to any transactional relationship with any such third party (or any of its shareholders, officers, directors, employees, agents, affiliates, creditors or contractual counterparts), or circumvent or attempt to circumvent the discussions and negotiations currently or hereafter entered into with respect to the Company's current or proposed customers or clients. In the event that my employment or other business relationship with the Company is terminated for any reason, I agree that I will not, for a period of 3 years from the date of such termination, engage in any business that is competitive with the Company within a 5 mile radius of any physical location of the Company nor solicit the services of any current or future employee or consultant of the Company

### **13. AUDIT**

I acknowledge that I have no reasonable expectation of privacy in any computer, handheld device, telephone, voicemail, email or other technology system that is used to conduct the business of the Company. All information, data, and messages created, received, sent, or stored in these systems are, at all times, the property of the Company. As such, the Company has the right to audit and search all such items and systems, without further notice to me, to ensure that the Company is licensed to use the software on the Company's devices in compliance with the Company's software licensing policies, to ensure compliance with the Company's policies, and for any other business-related purposes in the Company's sole discretion. I understand that I am not permitted to add any unlicensed, unauthorized, or non-compliant applications to the Company's technology systems, including, without limitation, open source or free software not authorized by the Company, and that I shall refrain from copying unlicensed software onto the Company's technology systems or using non-licensed software or websites. I understand that it is my responsibility to comply with the Company's policies governing use of the Company's documents and the internet, email, telephone, and technology systems to which I will have access in connection with my employment.

I am aware that the Company has or may acquire software and systems that are capable of monitoring and recording all Company network traffic to and from any computer, handheld device, telephone, voicemail, email or other technology system I may use to access the Company's internal networks. The Company reserves the right to access, review, copy, and delete any of the information, data, or messages accessed through these systems with or without notice to me and/or in my absence. This includes, but is not limited to, all e-mail messages sent or received, all website visits, all chat sessions, all news group activity (including groups visited, messages read, and postings by me), and all file transfers into and out of the Company's internal networks. The Company further reserves the right to retrieve previously deleted messages from e-mail or voicemail and monitor usage of the Internet, including websites visited and any information I have downloaded. In addition, the Company may review Internet and technology systems activity and analyze usage patterns, and may choose to publicize this data to assure that technology systems are devoted to legitimate business purposes.

**14. MISCELLANEOUS**

A. *Governing Law; Consent to Personal Jurisdiction.* This Agreement will be governed by the laws of the State of Nevada without regard to Nevada's conflicts of law rules that may result in the application of the laws of any jurisdiction other than Nevada. To the extent that any lawsuit is permitted under this Agreement, I hereby expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in Nevada for any lawsuit filed against me by the Company.

B. *Assignability.* This Agreement will be binding upon my heirs, executors, assigns, administrators, and other legal representatives, and will be for the benefit of the Company, its successors, and its assigns. There are no intended third-party beneficiaries to this Agreement, except as may be expressly otherwise stated. Notwithstanding anything to the contrary herein, National Specialty Pharmacy, LLC may assign this Agreement and its rights and obligations under this Agreement to any successor to all or substantially all of National Specialty Pharmacy, LLC's relevant assets, whether by merger, consolidation, reorganization, reincorporation, sale of assets or stock, or otherwise.

C. *Entire Agreement.* This Agreement, together with the Exhibits herein and any executed written offer letter between me and the Company, to the extent such materials are not in conflict with this Agreement, sets forth the entire agreement and understanding between the Company and me with respect to the subject matter herein and supersedes all prior written and oral agreements, discussions, or representations between us, including, but not limited to, any representations made during my interview(s) or relocation negotiations. I represent and warrant that I am not relying on any statement or representation not contained in this Agreement. Any subsequent change or changes in my duties, salary, compensation, conditions or any other terms of my employment will not affect the validity or scope of this Agreement.

D. *Headings.* Headings are used in this Agreement for reference only and shall not be considered when interpreting this Agreement.

E. *Severability.* If a court or other body of competent jurisdiction finds, or the Parties mutually believe, any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

F. *Modification, Waiver.* No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the an authorized representative of National Specialty Pharmacy, LLC and me. Waiver by National Specialty Pharmacy, LLC of a breach of any provision of this Agreement will not operate as a waiver of any other or subsequent breach.

G. *Survival.* The rights and obligations of the parties to this Agreement will survive termination of my employment with the Company.

Date: 5-21-18

  
Signature

MAYBELLINE ASH  
Name of Employee (typed or printed)

Witness:

                          
Signature

                          
Name (typed or printed)

**EXHIBIT C****NATIONAL SPECIALTY PHARMACY, LLC TERMINATION CERTIFICATION**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, any other documents or property, or reproductions of any and all aforementioned items belonging to National Specialty Pharmacy, LLC, its subsidiaries, affiliates, successors or assigns (together, the "Company").

I further certify that I have complied with all the terms of the Company's At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein) conceived or made by me (solely or jointly with others), as covered by that agreement.

I further agree that, in compliance with the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement, I will preserve as confidential all Company Confidential Information and Associated Third Party Confidential Information, including trade secrets, confidential knowledge, data, or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, databases, other original works of authorship, customer lists, business plans, financial information, or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants, or licensees.

I also agree that for twelve (12) months from this date, I will not directly or indirectly solicit any of the Company's employees to leave their employment at the Company. I agree that nothing in this paragraph shall affect my continuing obligations under the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement during and after this twelve (12) month period, including, without limitation, my obligations under **Section 3** (Confidentiality) thereof.

After leaving the Company's employment, I will be employed by \_\_\_\_\_ in the position of \_\_\_\_\_.

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Name of Employee (typed or printed) \_\_\_\_\_

Address for Notifications: \_\_\_\_\_

**EXHIBIT D****NATIONAL SPECIALTY PHARMACY, LLC CONFLICT OF INTEREST GUIDELINES**

It is the policy of National Specialty Pharmacy, LLC to conduct its affairs in strict compliance with the letter and spirit of the law and to adhere to the highest principles of business ethics. Accordingly, all officers, employees, and independent contractors must avoid activities that are in conflict, or give the appearance of being in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations that must be avoided:

1. Revealing confidential information to outsiders or misusing confidential information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended. (The At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement elaborates on this principle and is a binding agreement.)
2. Accepting or offering substantial gifts, excessive entertainment, favors, or payments that may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company.
3. Participating in civic or professional organizations that might involve divulging confidential information of the Company.
4. Initiating or approving personnel actions affecting reward or punishment of employees or applicants where there is a family relationship or is or appears to be a personal or social involvement.
5. Initiating or approving any form of personal or social harassment of employees.
6. Investing or holding outside directorship in suppliers, customers, or competing companies, including financial speculations, where such investment or directorship might influence in any manner a decision or course of action of the Company.
7. Borrowing from or lending to employees, customers, or suppliers.
8. Acquiring real estate of interest to the Company.
9. Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other person or entity with whom obligations of confidentiality exist.
10. Unlawfully discussing prices, costs, customers, sales, or markets with competing companies or their employees.
11. Making any unlawful agreement with distributors with respect to prices.
12. Improperly using or authorizing the use of any inventions that are the subject of patent claims of any other person or entity.
13. Engaging in any conduct that is not in the best interest of the Company.

Each officer, employee, and independent contractor must take every necessary action to ensure compliance with these guidelines and to bring problem areas to the attention of higher

management for review. Violations of this conflict of interest policy may result in discharge without warning. I understand that nothing in this Agreement is intended to limit employees' rights to discuss the terms, wages, and working conditions of their employment, as protected by applicable law.

**EXHIBIT B**

Order from National Specialty Pharmacy, LLC v. Padhye,  
Case No. 5:23-cv-04357-PCP (N.D. Cal. May 16, 2024)

This order dismissed NSP's DTSA claims for failing to identify specific trade secrets and for lack of connection to interstate commerce.

NATIONAL SPECIALTY PHARMACY,  
LLC,  
Plaintiff,  
v.  
SAMEER PADHYE, et al.,  
Defendants.

Case No. 23-cv-04357-PCP

**ORDER GRANTING MOTIONS TO  
DISMISS**

Re: Dkt. Nos. 14, 17, 28, 44

This is a dispute between a Nevada-based Delaware LLC and four of its former employees, two businesses allegedly associated with some of those former employees, and one former employee's brother. Four defendants have filed motions to dismiss. All four motions are granted.

**I. Background**

The following allegations from the complaint are taken as true in resolving this motion.

Plaintiff National Specialty Pharmacy, LLC is a compounding pharmacy. It develops, compounds, markets, and distributes medicines. Defendants Sameer Padhye, Maybelline Sana, Rayne Bridges, and Daniel Brown are former employees of NSP. Ms. Sana was hired as a pharmacy technician in May 2018 and later promoted to run human resources. Mr. Padhye was hired as a strategist in October 2022. Ms. Bridges was hired as an account executive in December 2022. Mr. Brown was hired as a marketing and content manager in January 2023. Mr. Padhye was fired in June 2023. Ms. Bridges, Ms. Sana, and Mr. Brown resigned later that summer.

The complaint alleges that these former employees took NSP's confidential information and other property and transferred it to their affiliated businesses, defendants Coligomed, Inc. and Enlil, Inc. Enlil is owned by Sameer Padhye, and Coligomed is owned by his brother, Abhinay Padhye. The complaint also alleges that Ms. Sana lied to coworkers about NSP executives, that

1 other defendants modified NSP corporate records without permission, and that several of the  
 2 former employees improperly accessed NSP systems both before and after their terminations.

3 NSP filed the operative complaint in September 2023, which four defendants moved to  
 4 dismiss. The case was then briefly stayed at NSP's request, after which the Court held a hearing.

## 5 **II. Legal Standards**

6 Federal Rule of Civil Procedure 8 requires a "short and plain statement of the claim  
 7 showing that the pleader is entitled to relief," with allegations that are "simple, concise, and  
 8 direct." A complaint must "plausibly suggest" entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S.  
 9 662, 681 (2009). It must also give "fair notice" and "enable" the defendant "to defend itself  
 10 effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). A pleading cannot be "so vague  
 11 or ambiguous" that an opponent "cannot reasonably prepare a response." See Fed. R. Civ. P. 12(e).

12 A complaint that does not state a claim upon which relief can be granted can be dismissed  
 13 under Rule 12(b)(6). "A claim has facial plausibility when the plaintiff pleads factual content that  
 14 allows the court to draw the reasonable inference that the defendant is liable." *Iqbal*, 556 U.S. at  
 15 678. Legal conclusions must be "supported by factual allegations." *Id.* at 679. The Court must  
 16 "accept all factual allegations" and "construe the pleadings in the light most favorable to the  
 17 nonmoving party." *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029–30 (9th Cir. 2009).

## 18 **III. Rayne Bridges's Motion To Dismiss for Lack of Personal Jurisdiction Is Granted.**

19 Ms. Bridges is representing herself. She moves to dismiss all claims against her for lack of  
 20 personal jurisdiction and for failure to state a claim.

21 Ms. Bridges asserts that she is a Nevada resident. She states that she never performed work  
 22 in California for NSP, and that she has no other California contacts. NSP bases jurisdiction on Ms.  
 23 Bridges' employment agreement, which includes the following governing law clause:

24 This Agreement will be governed by the laws of the State of  
 25 California without regard to California's conflicts of law rules.... To  
 26 the extent that any lawsuit is permitted under this Agreement, I hereby  
 27 expressly consent to the personal and exclusive jurisdiction and venue  
 of the state and federal courts located in California for any lawsuit  
 filed against me by the Company.

28 Dkt. No. 1-1, at 100.

1       Because contract interpretation and enforcement present matters of state law, the Court  
 2 first applies California’s choice of law rules to select the rule of decision. *See Klaxon Co. v.*  
 3 *Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). California law applies by default unless a party  
 4 invokes another jurisdiction’s law. *Hurtado v. Super. Ct.*, 11 Cal. 3d 574, 581 (1974). Here,  
 5 neither party invokes another forum’s law, so the Court applies California law.

6       Under California law, mandatory forum selection clauses such as the one in Ms. Bridges’s  
 7 contract are “given effect unless enforcement would be unreasonable or unfair.” *Verdugo v.*  
 8 *Alliantgroup, L.P.*, 237 Cal. App. 4th 141, 147 (2015). “A clause is reasonable if it has a logical  
 9 connection with at least one of the parties or their transaction.” *Id.*

10      The Court concludes that California has no logical connection to Ms. Bridges or to her  
 11 work with NSP. Ms. Bridges is a Nevada resident who asserts that she has no contacts with  
 12 California. NSP is a Delaware LLC with its principal place of business in Las Vegas, Nevada. Ms.  
 13 Bridges asserts that she completed all relevant work for NSP entirely within Nevada. And while  
 14 the complaint asserts that NSP is “registered to do business” in California and has “operations” in  
 15 the state (along with several others), it is not clear what connection NSP has with California in the  
 16 context of Ms. Bridges’s employment in Nevada—especially since other employment agreements  
 17 submitted by NSP include a Nevada forum selection clause. *See* Dkt. No. 1-1, at 56 (Ms. Sana’s  
 18 agreement).

19      Accordingly, the California forum selection clause in Ms. Bridges’ employment agreement  
 20 is not reasonable and cannot be enforced. And because the forum selection and personal  
 21 jurisdiction consent language in the clause are “inextricably bound up,” *cf. Verdugo*, 237 Cal.  
 22 App. 4th at 154, the personal jurisdiction and forum selection provisions of this clause “must be  
 23 read jointly,” *see Lang v. Skytap, Inc.*, 347 F. Supp. 3d 420, 429 (N.D. Cal. 2018) (citing *Verdugo*,  
 24 at 154). The personal jurisdiction consent clause therefore also cannot be enforced.

25      Absent consent, this Court lacks personal jurisdiction over Ms. Bridges. This Court does  
 26 not have general personal jurisdiction over Ms. Bridges because she does not live in California.  
 27 Specific personal jurisdiction is also lacking. “For cases sounding in tort, … a defendant has  
 28 sufficient minimum contacts with the forum state to establish specific personal jurisdiction if:

1       (1) the defendant purposefully directs activities toward the forum state, (2) the plaintiff's claim  
 2 arises out of or relates to those activities, and (3) an exercise of jurisdiction would be reasonable.”  
 3 *Burri Law PA v. Skurla*, 35 F.4th 1207, 1212 (9th Cir. 2022). The first element, purposefully  
 4 directing activities to a state, in turn requires that “a defendant: (1) commits an intentional act,  
 5 (2) expressly aimed at the forum state, that (3) causes harm the defendant knew was likely to be  
 6 suffered in the forum state.” *Id.* at 1213.

7           Here, the complaint does not clearly allege any specific intentional acts by Ms. Bridges  
 8 that were expressly aimed at California, let alone that Ms. Bridges knew these actions would cause  
 9 harm in California or that NSP’s claims against her arise out of any such actions. Accordingly,  
 10 NSP has not provided any basis for this Court to exercise specific personal jurisdiction over Ms.  
 11 Bridges. All claims against Ms. Bridges are therefore dismissed pursuant to Federal Rule of Civil  
 12 Procedure 12(b)(2) without prejudice to their refiling in an appropriate jurisdiction.

#### 13       **IV. Maybelline Sana’s Motion To Dismiss for Lack of Personal Jurisdiction Is Granted.**

14           Like Ms. Bridges, Ms. Sana lives in Nevada. Unlike Ms. Bridges, Ms. Sana’s employment  
 15 agreement does not purport to contain a California forum-selection clause.<sup>1</sup> Because Ms. Sana is  
 16 not a California resident and is not alleged to have consented to personal jurisdiction here,  
 17 personal jurisdiction over Ms. Sana exists here only if NSP’s claims arise out of actions taken by  
 18 Ms. Sana that were expressly aimed at California and likely to cause harm there.

19           NSP alleges several ways its claims relate to California. But all but one are contacts by  
 20 people other than Ms. Sana that provide no basis for the Court to exercise specific personal  
 21 jurisdiction over her. For example, NSP asserts in its opposition brief (contrary to the complaint)  
 22 that it has its “corporate residence” in California, that NSP’s “ownership” is in California, that  
 23 defendants Sameer Padhye, Enlil, and Coligomed are all California residents, and that other  
 24 defendants (but not Ms. Sana) had California forum-selection clauses in their agreements. None of  
 25 these allegations demonstrate Ms. Sana’s own targeting of this California forum.

1       The only alleged California contacts that potentially involve Ms. Sana are that the “target  
2 [sic] ... of the acts complained of were California entities,” and that the “conduct of the improper  
3 activities was accomplished within California, by Defendant Padhye, working remotely and  
4 electronically from there with Defendant Sana.” Opposition, Dkt. No. 48, at 14. But these  
5 assertions do not identify any specific conduct by Ms. Sana, as opposed to the other defendants,  
6 that was targeted toward California. “On a motion to dismiss, the plaintiff has the burden to show  
7 that the Court has jurisdiction. *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716,  
8 741 (9th Cir. 2013). NSP has failed to meet this burden by providing even a *prima facie* showing  
9 of facts suggesting that this Court has specific personal jurisdiction over Ms. Sana. Ms. Sana’s  
10 motion to dismiss for lack of personal jurisdiction is also therefore granted without prejudice to  
11 the refiling of any claims against her in an appropriate forum.

12       **V. The Remaining Motions To Dismiss for Failure To State a Claim Are Granted.**

13       The corporate defendants—Enlil and Coligomed—do not challenge this Court’s  
14 jurisdiction. (The complaint alleges that both operate out of Santa Clara County.) Instead, both  
15 companies seek dismissal for failure to state a claim under Rule 12(b)(6). The complaint asserts  
16 the same five claims against both Coligomed and Enlil, which are addressed in turn below.

17       **A. Tortious Interference**

18       The first claim asserted against Coligomed and Enlil is for tortious interference with a  
19 contract. The elements are “(1) a valid contract between plaintiff and a third party; (2) defendant’s  
20 knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or  
21 disruption of the contractual relationship; (4) actual breach or disruption...; and (5) resulting  
22 damage.” *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 55 (1998).

23       NSP’s complaint for tortious interference against “all Defendants” is too vague to state a  
24 claim. The complaint merely asserts that “Defendants” interfered with NSP’s “contracts.” Compl.  
25 ¶ 80. But it does not specify what contracts were interfered with nor does it clearly allege which  
26 defendants interfered and how. The tortious interference claims against both Coligomed and Enlil  
27 are therefore dismissed with leave to amend. To survive dismissal, any amended complaint must  
28 clearly allege facts supporting each element of a claim against each defendant.

1           **B. Conversion and Conspiracy To Convert**

2           The next two claims asserted against the corporate defendants are for conversion and  
 3 conspiracy to convert. (Because conspiracy is not a separate cause of action but rather an alternate  
 4 theory of liability the Court addresses these two claims together.) “The elements of a conversion  
 5 claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s  
 6 conversion by a wrongful act or disposition of property rights; and (3) damages.” *Lee v. Hanley*,  
 7 61 Cal. 4th 1225, 1240 (2015).

8           The conspiracy allegations are again vague and conclusory. This claim is again asserted  
 9 against “all Defendants” without distinction. The property referenced is “Confidential Information,  
 10 trade secrets, third-party information, and other proprietary information and other … property.”  
 11 Compl. ¶ 83. There are hardly any specific allegations about either Coligomed or Enlil. The  
 12 complaint simply asserts that each company “acted as a conduit and/or recipient of beneficiary  
 13 [sic] of improperly obtained … property.” Compl. ¶¶ 8–9. The complaint does not identify any  
 14 particular property that was allegedly converted by either company, nor does it allege any specific  
 15 act to wrongfully convert any property. Without such allegations, NSP has failed to state a claim,  
 16 and the conversion and conspiracy claims are dismissed with leave to amend.

17           **C. Misappropriation of Trade Secrets**

18           The next claim against the corporate defendants is for misappropriation of trade secrets in  
 19 violation of the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1836. “To succeed on a claim for  
 20 misappropriation of trade secrets under the DTSA, a plaintiff must prove: (1) that the plaintiff  
 21 possessed a trade secret, (2) that the defendant misappropriated the trade secret; and (3) that the  
 22 misappropriation caused or threatened damage to the plaintiff.” *InteliClear, LLC v. ETC Glob.  
 Holdings, Inc.*, 978 F.3d 653, 657–58 (9th Cir. 2020). “To prove ownership of a trade secret,  
 24 plaintiffs must identify the trade secrets and carry the burden of showing they exist.” *Id.* (cleaned  
 25 up). “Plaintiffs must clearly refer to tangible trade secret material instead of referring to a system  
 26 which potentially qualifies for trade secret protection. Plaintiffs may not simply rely upon  
 27 ‘catchall’ phrases or identify categories of trade secrets ....” *Id.* (cleaned up).

28           NSP’s misappropriation claim does not meet this requirement. The trade secrets identified

1 in the complaint are “vendor and partner information, proprietary formulas, business processes,  
 2 pricing strategies, pricing data, marketing methods, other data, computer and software processes  
 3 and systems …, and more.” Compl. ¶ 88. These descriptions do not clearly refer to tangible trade  
 4 secret material as required. Instead, they are “catchall” categories of the *kinds* of trade secrets that  
 5 might be at issue. This claim is deficient and is similarly dismissed with leave to amend. In any  
 6 amended complaint, NSP must identify the specific material alleged to constitute a trade secret  
 7 (under seal if necessary) and clearly allege facts showing the Coligomed or Enlil took actions that  
 8 constituted misappropriation.

#### 9           **D.       Unfair Business Practices**

10           The final claim asserted against Coligomed and Enlil is for committing alleged unfair  
 11 business practices in violation of California’s Unfair Competition Law (UCL), Bus. & Prof. Code  
 12 § 17200 *et seq.* The complaint asserts that “all Defendants … engaged in behavior which was  
 13 unlawful, unfair, and fraudulent,” and which “was also deceptive, untrue, and misleading.” Compl.  
 14 ¶ 95. These barebones allegations do not identify any specific actions taken by Coligomed or Enlil  
 15 that is alleged to have violated the UCL. The allegations are conclusory and deficient under Rule  
 16 8. This claim is therefore dismissed with leave to amend.

#### 17           **VI.      Conclusion**

18           Defendants’ motions to dismiss are granted for the reasons set forth above. Because the  
 19 Court does not have personal jurisdiction over Ms. Bridges or Ms. Sana, these defendants are  
 20 dismissed from this action. NSP may file an amended complaint to attempt to resolve the  
 21 shortcomings identified above in its claims against Coligomed and Enlil. An amended complaint,  
 22 should NSP choose to file one, will be due June 3, 2024.

23  
 24           **IT IS SO ORDERED.**

25           Dated: May 16, 2024

26  
 27  
 28




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P. Casey Pitts  
United States District Judge

**EXHIBIT C**

Transcript Excerpt from National Specialty Pharmacy, LLC v. One Way Drug, LLC,  
Case No. 2:21-cv-01082-JAD-VCF (D. Nev. Sept. 28, 2021)

Portions cited: Pages 19–21, related to dismissal of DTSA claim for lack of interstate commerce nexus.

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEVADA  
3 NATIONAL SPECIALTY PHARMACY, )  
4 LLC and GIVING HOME )  
5 HEALTHCARE, LLC, )  
6 Plaintiffs, ) Case No. 2:21-cv-01082-JAD-VCF  
7 vs. ) Las Vegas, Nevada  
8 ONE WAY DRUG LLC dba PARTELL ) Courtroom 6D  
9 PHARMACY, ADVANCED CARE GROUP ) MOTION HEARING  
10 LLC aka ADVANCED CARE GROUP )  
11 HOME HEALTH AGENCY, and )  
12 WILLIAM TILGHMAN, )  
13 Defendants. )  
14 \_\_\_\_\_) **C E R T I F I E D C O P Y**

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS CONDUCTED VIA ZOOM  
16 BEFORE THE HONORABLE JENNIFER A. DORSEY  
17 UNITED STATES DISTRICT COURT JUDGE  
18

19 APPEARANCES:

20 For the Plaintiffs: **ALLISON L. KHEEL, ESQ.**  
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22 300 South Fourth Street, Suite 1500  
23 Las Vegas, Nevada 89101  
24 (702) 252-3131

25 (Appearances continued on page 2.)

Court Reporter: Amber M. McClane, RPR, CRR, CCR #914  
United States District Court  
333 Las Vegas Boulevard South, Room 1334  
Las Vegas, Nevada 89101  
(702) 384-0429 or AM@nvd.uscourts.gov

Proceedings reported by machine shorthand. Transcript  
produced by computer-aided transcription.

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1 APPEARANCES CONTINUED:

2 For the Defendants One Way Drug, LLC and William Tilghman:

3 **JONATHAN W. HEATON, ESQ.**

HEATON FONTANO, LTD.

4 7285 Dean Martin Drive, Suite 180

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6 For the Defendant Advanced Care Group, LLC:

7 **TIMOTHY ELSON, ESQ.**

THE LAW OFFICES OF TIMOTHY ELSON

8 8965 South Eastern Avenue, Suite 382

Las Vegas, Nevada 89123

9 (702) 874-8600

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1 LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 28, 2021; 11:01 A.M.

2 --oo--

3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** Now's the time set for a  
5 motions hearing in Case Number 2:21-cv-1082-JAD-VCF, National  
6 Specialty Pharmacy, LLC versus One Way Drug, LLC.

7 Counsel, please state your appearances.

8 **MR. HEATON:** Yes. Jonathan Heaton on behalf of  
9 defendants Partell Pharmacy and William Tilghman.

10 **MS. KHEEL:** Allison Kheel on behalf of the plaintiffs  
11 National Specialty Pharmacy and Giving Home Healthcare.

12 **MR. ELSON:** Good morning, Your Honor. This is Tim  
13 Elson appearing on behalf of Advanced Care Group.

14 **THE COURT:** All right. Well, good morning. In this  
15 action plaintiffs National Specialty Pharmacy -- oh. Sorry.

16 (*Reporter interruption.*)

17 **THE COURT:** Sorry about that. We'll start over.  
18 Yeah. We're having, like, weird sound things going on here in  
19 the courtroom so I apologize, but I can see and hear all of  
20 you. So if you can hear me and see me, then I think we're  
21 okay.

22 So in this action plaintiffs National Specialty  
23 Pharmacy and Giving Home Healthcare, a local compounding  
24 pharmacy and a home health care company, sue their former  
25 employee, William Tilghman, and his new employers, One Way

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1 Drug d/b/a Partell Pharmacy and Advanced Care Group, LLC,  
2 alleging that Tilghman took his company laptop and secret  
3 client list and trade secrets with him and is using them in  
4 his new employment.

5 The plaintiffs assert 12 claims, ten of which are  
6 state law claims and two of which attempt to state federal  
7 claims to anchor jurisdiction here.

8 All defendants move to dismiss. These motions are  
9 found at Numbers 19, 22, and 28 in the docket. They raise  
10 essentially the very same arguments. The primary argument is  
11 that this court lacks subject matter jurisdiction over this  
12 case because the plaintiffs do not and cannot state their  
13 federal claims so this Court should dismiss the federal claims  
14 without leave to amend and then decline to exercise  
15 supplemental jurisdiction over the remaining state law claims  
16 essentially forcing the plaintiffs to refile in state court.  
17 The plaintiffs oppose the motions.

18 The motions are fully briefed. I have read  
19 everything, and I fully understand the arguments. I am going  
20 to allow each side ten minutes of argument.

21 So let me ask the defendants. I see, Mr. Heaton and  
22 Mr. Elson, you are both here. Your arguments are entirely  
23 overlapping. Advanced Care's arguments are essentially  
24 Partell's arguments. Do you -- do you intend only one of you  
25 will argue today, or do you require separate arguments?

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1                   **MR. HEATON:** Your Honor, I think, if it's okay with  
2 the Court, I would take the lead on the argument. And then,  
3 if Mr. Elson had anything to add at the very end, if we have a  
4 minute or two left, that maybe he could chime in at that  
5 point.

6                   **THE COURT:** All right. Perfect.

7                   So I'm going to allow each side ten minutes for  
8 argument. And I will allow -- Mr. Heaton, I will allow you to  
9 reserve up to three minutes of that for rebuttal. And  
10 actually, you know what? Since we do have three different --  
11 so if you could just reserve some of your arguments -- or  
12 argument time for Mr. Elson if he needs to add anything, but I  
13 think that the arguments truly are overlapping.

14                  So all -- would you -- how -- let me try that again.  
15 Mr. Heaton, how long would you like me to reserve for your  
16 rebuttal, up to three minutes?

17                  **MR. HEATON:** Let's reserve two minutes --

18                  **THE COURT:** Okay.

19                  **MR. HEATON:** -- for rebuttal.

20                  **THE COURT:** All right. I'm going to put eight  
21 minutes on the clock.

22                  And whenever you are ready.

23                  **MR. HEATON:** Okay. Thank you, Your Honor. I  
24 appreciate that.

25                  As Your Honor mentioned, you know, if you've read the

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1 briefing -- and I think we've fully briefed these arguments --  
2 you know, we think that this case ought to be dismissed in its  
3 entirety for lack of subject matter jurisdiction. You know,  
4 the non-Tilghman defendants -- defendants, I guess, also have  
5 some additional failure to state a claim arguments, but I  
6 think the crux of our arguments really is the subject matter  
7 jurisdiction argument; that the plaintiffs have not and cannot  
8 properly pled their entitlement to federal question  
9 jurisdiction under these two statutes: The Defend Trade  
10 Secrets Act and the Computer Fraud and Abuse Act -- Computer  
11 Fraud Abuse Act.

12 You know, we think that the two out of ten causes of  
13 action in the complaint that they allege are really tangential  
14 at best to the -- to the overwhelming substance of the  
15 complaint which -- which arises under state law. We think  
16 that, you know, the true motivation in all of this is to try  
17 to get the defendants to be here in Federal Court, and while  
18 we -- you know, we of course respect Your Honor and respect  
19 the Federal Court, you know, we really do think that these are  
20 state law issues that are better litigated in state court, if  
21 they need to be litigated at all. And we, of course, dispute  
22 whether they do or not. But for purposes of today, you know,  
23 we would -- we would just say that, you know, to the extent  
24 that there is any merit to the claims, they ought to go to --  
25 into state court.

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1                   So the crux of our position and argument is really  
2 that both of the statutes at issue have these key interstate  
3 commerce components to them, and -- and plaintiffs haven't  
4 pled anything that we think would satisfy that interstate  
5 commerce component under sort of a facial analysis of -- of  
6 their complaint.

7                   And then, in Mr. Tilghman's motion to dismiss, which  
8 was the latest of the three that's before the Court, we also  
9 were able to provide some additional support by way of  
10 declaration of Mr. Tilghman, you know, as a factual matter  
11 showing that we really -- we really don't believe that, even  
12 if plaintiffs were given leave to amend, that they would be  
13 able to amend their complaint in such a way that would fix the  
14 defect on the interstate commerce issue because the facts just  
15 simply won't support it.

16                  You know, we think under both analyses, both the  
17 facial and the factual analysis, that the -- you know, the  
18 causes of action pled in the complaint fail as a matter of  
19 law. And once those are dismissed, there's really no longer  
20 any compelling reason for this Court to retain the state law  
21 claims.

22                  So, you know, if I could just for a couple minutes,  
23 you know, just address each of the statutes in question. You  
24 know, as to the DTSA or the Defend Trade Secrets Act,  
25 Your Honor, I think where the plaintiffs are really missing

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1       the point is that the plain language of that statute requires  
2       a connection or nexus between the trade secret at issue and a  
3       product or service being used in interstate commerce. And,  
4       you know, the plaintiffs have tried to identify various ways  
5       in which they have some tangential relationship to interstate  
6       commerce. You know, they said, oh, we have some suppliers,  
7       you know, in our compounding pharmacy that produce -- you  
8       know, that send us components for some of these -- these drugs  
9       that we, you know, compound. And they say, oh, one of our  
10      parties is actually a Delaware entity; right? And so there  
11      are some of these things that they're -- you know, they're  
12      trying to meet this interstate commerce requirement.

13           But what they can't say and what they haven't said is  
14      that they are providing services to the subject population  
15      which -- of these patients, which are the trade secret at  
16      issue; right? They're saying that Mr. Tilghman took their  
17      patient lists and that these parties -- these defendant  
18      parties are acting in concert to, you know, sort of take these  
19      patients. They can't say that any of that is occurring, you  
20      know, out of state. They can't say that they are providing  
21      the subject patients with services out of state. They can't  
22      say that Partell Pharmacy is providing services to these  
23      patients out of state. And so really the trade secret at  
24      issue is entirely within Nevada. It's not -- it has nothing  
25      to do with anything out of state.

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1                   And even Mr. Tilghman's noncompete, I think, as we  
2 reference in the briefing, you know, itself indicates that  
3 it's -- it's a 5-mile radius, right, is where he's not allowed  
4 to compete if you accept, you know, that agreement and -- and  
5 use that as the analysis. And the last time I checked, you  
6 know, 5 miles doesn't get you to the state line of Nevada;  
7 right?

8                   And so -- so we really don't -- we haven't -- we  
9 haven't been able to find anything in the Ninth Circuit or  
10 directly binding on this Court that really squarely addresses  
11 this issue. But I think, Your Honor, we did try in the  
12 briefing to provide some good cases that are from other  
13 jurisdictions, other Federal District Courts, and we think  
14 that they have considered this issue and they've come up with  
15 some reasonable analysis, and they've -- and they've found  
16 that it's an important -- that it's -- it's -- there are  
17 reasons why we have the interstate commerce components of  
18 these federal statutes; right? And to not require that  
19 plaintiffs address that would be to render those components of  
20 these statutes meaningless.

21                   And so -- so we think that those cases address and  
22 reject most of the plaintiffs' arguments -- really, all of the  
23 plaintiffs' arguments in this case, and that this Court would  
24 be on firm footing and reasonable footing to -- to adopt sort  
25 of that same analysis and force the plaintiffs to -- you know,

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1 to force these things to be dismissed here as well.

2 So, you know, I guess, to sum up, you know, we think  
3 that the plaintiffs' position would render the interstate  
4 commerce component of these statutes meaningless, and we  
5 respectfully think that there's a reason why those components  
6 of the statutes exist and it would be bad precedent to allow  
7 parties to come into this court and argue, you know,  
8 essentially as plaintiffs are, that in almost every  
9 conceivable case a party can satisfy interstate commerce under  
10 the DTSA just by having some unrelated dealings, you know, out  
11 of state or have some kind of general -- you know, generic  
12 federal funding or regulation, you know, applicable to them as  
13 an entity. We just -- we just think that those arguments are  
14 a little bit absurd.

15 As to the -- as to the Computer Fraud and Abuse Act,  
16 Your Honor, I think -- I think this one really almost speaks  
17 for itself even better than the DTSA just because, again, you  
18 know, the plaintiffs appear to want to say that essentially  
19 every computer in today's world is a protected computer under  
20 that statute, and we just respectfully disagree. You know,  
21 plaintiffs don't appear to care how the computer was actually  
22 used or whether it was used. They're essentially saying that,  
23 you know, the mere fact of it having the Internet connection  
24 alone satisfies interstate commerce, and thus, you know,  
25 essentially every computer in today's world is a protected

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1 computer. And we just don't think that's a reasonable  
2 argument.

3 And we don't think it's -- we similarly don't think  
4 it's a reasonable argument that, you know, any purported  
5 improper use of a laptop, which we dispute as a factual  
6 matter, could have run afoul of the Atomic Energy Act and --  
7 and that, you know, these -- that somehow Partell and/or the  
8 other defendants were doing this, you know, with the  
9 expectation that it's going to be used by enemies of the  
10 United States. You know, we just don't think that that's a  
11 reasonable argument.

12 And so, you know, in conclusion, Your Honor, I would  
13 just say, you know, we're asking that the Court dismiss this.  
14 You know, there was some back-and-forth in the briefing about  
15 what we were asking for. We're asking that this entire action  
16 be dismissed. We think, once these two federal causes of  
17 action are dismissed, that the relevant case law around  
18 supplemental jurisdiction would -- would also compel this  
19 Court to dismiss the remaining claims. And it's not -- we  
20 don't believe it's prejudicial to plaintiffs. We just think  
21 they shouldn't have come here in the first place. If they  
22 want to file their complaint -- their complaint, they can do  
23 it in state court and we can litigate there.

24 And with that, Your Honor, I would turn it over.  
25 Thank you.

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1                   **THE COURT:** Thank you.

2                   Mr. Elson, I'll give you -- I'll add three more  
3 minutes if you have something that you want to add.

4                   **MR. ELSON:** Thank you, Your Honor. And I'll --

5                   **THE COURT:** Hold on. Give me one second just to put  
6 that on the clock.

7                   Go ahead.

8                   **MR. ELSON:** Yes, Your Honor. And I'll -- I'll make  
9 sure and keep it brief because I think largely the filings we  
10 submitted to this Court highlights the deficiencies with the  
11 pleadings.

12                  And the one thing I want to focus on is the request  
13 for leave to amend and the fact that these deficiencies can't  
14 be cured by any request for leave to amend. And how do we  
15 know this, Your Honor? Well, first, there's no pleading  
16 attached in direct contradiction of Local Rule 15-I(a). So  
17 plaintiffs haven't bothered to show how they can cure it.  
18 There's case law out there that cites that -- that states that  
19 a court cannot determine if leave to amend is appropriate  
20 without the proposed pleading. And even if this Court were to  
21 not strictly enforce those rules -- which we believe you  
22 should -- they haven't even stated in their moving papers what  
23 fact they would plead to overcome these blatant deficiencies  
24 with the jurisdiction before this Court.

25                  And they didn't just do it once. They missed the

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1 opportunity three times, and they missed the opportunity on  
2 the third time even -- or, actually, twice. After I pointed  
3 all of this out in my motion, they still filed two oppositions  
4 without a proposed pleading and without setting forth any  
5 specific facts in the moving papers. And so I think that if  
6 there's any doubt in Your Honor's mind about whether to simply  
7 dismiss, the -- their actions should make it clear to this  
8 Court that dismissal is the appropriate remedy here today.

9 And so unless Your Honor has any questions, I will  
10 pass the briefing -- or pass the argument at this time.

11 **THE COURT:** All right. Thank you.

12 Ms. Kheel, I'm going to put 12 minutes on the clock  
13 for you since I gave the other side an extra two minutes.

14 Whenever you're ready.

15 **MS. KHEEL:** Thank you, Your Honor.

16 So we're here today on a motion to dismiss, and the  
17 crux of this is they need to show that we both do not and  
18 cannot state federal jurisdiction. And we believe we've done  
19 both.

20 We are not required under the rules to use any types  
21 of magic words as long as it can be determined from the  
22 allegations in the complaint that federal jurisdiction has  
23 been established. And they make a lot of arguments about how  
24 these trade secrets aren't related in any way to interstate  
25 commerce, and this is a tenuous argument at best.

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1                   Essentially --

2                   *(Phone interruption in the proceedings.)*

3                   **MS. KHEEL:** Sorry, Your Honor.

4                   Essentially where we're at is our clients have  
5 confidential, HIPAA protected health information about  
6 critically ill, vulnerable, elderly patients. All of these  
7 patients are participants in a Federal Government program and  
8 are receiving reimbursement for their claims for medications,  
9 for services, for home health care through the DEEOICP, which  
10 is a DOL-based program through the Department of Energy for  
11 Department of Energy workers who worked at nuclear test site  
12 facilities or are currently employed by nuclear test site  
13 facilities.

14                  It is a very lucrative program, and that is why  
15 defendants are interested in the benefits to begin with.  
16 These are federally run programs. The reimbursement comes  
17 federally through interstate commerce. These are claims filed  
18 by people in multiple states, and by our state they go through  
19 the federal program. They travel interstate. These are also  
20 reimbursements for prescription drugs, and the prescription  
21 drugs, most of the compounds that are being used are supplied  
22 interstate. And, therefore, there really is a clear  
23 connection, and we believe that connection is demonstrated  
24 thoroughly in the pleadings.

25                  And to address Mr. Elson's point, we believe that it

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1 was sufficiently pled in the complaint. The complaint is very  
2 lengthy and created -- and contained sufficient and  
3 significant detail of all the programs and what was undertaken  
4 with that and what these people have to file. So the fact  
5 that we didn't file a proposed amended pleading is because we  
6 did not believe that we needed to because we believe that the  
7 complaints and allegations in the complaint are sufficient to  
8 establish federal question jurisdiction.

9 We're talking about trade secrets under the Defend  
10 Trade Secrets Act. First and foremost, that's the heart of  
11 this. That's the heart of these claims. And, yes, the Defend  
12 Trade Secrets Act does overlap significantly with the Nevada  
13 Uniform Trade Secrets Act. The language is almost identical.  
14 That doesn't mean that we don't have a claim under the Defend  
15 Trade Secrets Act. We've shown that these trade secrets that  
16 we are trying to protect, this confidential information about  
17 customers, what benefits they get, what reimbursements they  
18 get, what prescriptions they get is essential and it meets the  
19 test for a trade secret under the Defend Trade Secrets Act.

20 In terms of the Computer Fraud and Abuse Act, it is  
21 very telling that the plaintiffs here have -- or the  
22 defendants here have refused plaintiffs' offer to -- we  
23 contacted plaintiffs -- or we can -- we, the plaintiffs,  
24 contacted the defendants to offer them some kind of discovery  
25 protection so that we could secure the return of our computer

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1 and so that we could stop what was blatant misappropriation  
2 and access of our computer, and they refused. Mr. Seik, who  
3 is the owner and managing member of Partell, specifically said  
4 to us that they were going to keep doing what they were doing  
5 because they didn't have a contract and they didn't believe  
6 that anything that they were doing was wrong. And they have,  
7 to date, refused to return our property, our protected  
8 computer.

9 So to the extent that they believe, oh, we're going  
10 to now submit a declaration from Mr. Tilghman saying I haven't  
11 accessed the computer, without the computer, we cannot verify  
12 one way or other. That's why we are here. We believe he has  
13 accessed it. We believe he is using this information. And  
14 the computer has information on it that specifically pertains  
15 to prescription drug information that is made from compounds  
16 that travel interstate. Prescriptions have been delivered to  
17 our patients out of state. And we believe that if the Court  
18 finds it necessary for us to add those allegations  
19 specifically into the complaint, we're happy to do so,  
20 although we don't feel that it is necessary here.

21 Additionally, there's no Ninth Circuit or binding  
22 authority requiring dismissal here. Dismissal is not the  
23 answer.

24 Also, he may have accessed information through his  
25 cell phone which is -- also would have been transferred

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1       interstate and would have been a product that, you know, is an  
2       additional protected computer and protected device. And he  
3       has contact information for patients. And if he's ever  
4       traveled interstate, which we believe that he has, and ever  
5       had his cell phone with him, then that additionally shows  
6       interstate commerce connections.

7                  And I'll open it up for questions from the Court.

8       **THE COURT:** I don't have any. Thank you so much.

9       **MS. KHEEL:** Okay. Thank you, Your Honor.

10       Mr. Heaton, two-minute rebuttal.

11       **MR. HEATON:** Thank you, Your Honor.

12       There was a lot there, and I tried to take some  
13       notes. What I would say is, you know, first of all, you know,  
14       this notion that we had to meet some kind of a showing here,  
15       the case law is pretty definitive that plaintiffs have the  
16       burden to establish subject -- subject matter jurisdiction.  
17       They're the ones, under the Ninth Circuit binding precedent,  
18       that have to come in here and show the Court why there's a  
19       true federal question and how they have subject matter  
20       jurisdiction. We don't believe they've done that. We don't  
21       believe they can do that.

22       I would also -- you know, I'd just like to address  
23       this notion of -- that -- that plaintiffs, you know, should  
24       fall under the -- the interstate commerce -- they meet the  
25       interstate commerce requirement because of the -- you know,

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1       the fact of there being a federally funded -- involved in a  
2       federally-funded program. And I would just turn the Court's  
3       attention to *DLMC, Inc. versus Flores*, and that's out of the  
4       District of Hawaii. Again, we acknowledge not binding; right?  
5       But we think it's a very thoughtful case, and I'll just read a  
6       little bit from that case.

7               It says: The plaintiffs' only argument in support of  
8       the existence of the required nexus is that all plaintiffs'  
9       clients, including the ones defendants are accused of taking,  
10      have federal patient identification numbers so as to allow for  
11      their receipt of federal funds for the services provided to  
12      them by plaintiff. Plaintiff also asserts that plaintiff is  
13      an entity whose very existence relies on and is conditioned  
14      upon federal application, certification, and approval.  
15      Federal -- plaintiffs' services are subject to federal law  
16      relating to federal funds. These allegations beg the question  
17      of whether and how the trade secrets defendants are alleged to  
18      have misappropriated are somehow related to the provision of  
19      interstate services offered by plaintiff. These dots are  
20      neither connected in the complaint nor in any of plaintiffs'  
21      other submissions to the Court and, indeed, it appears the  
22      plaintiff does not offer any interstate services. The same is  
23      true with regard to defendants.

24               And the Court goes on to say that, you know, the  
25      Court can't conclude that interstate commerce is met just by

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1 some of these tangential matters.

2 I would say just -- just quickly, you know, I can't  
3 address the substance of the facts, but I would say ECFs 34  
4 and 36 do address a number of those facts. It's in a pending  
5 motion before the magistrate judge, and I would invite the  
6 Court to review those if there are questions as to the laptop  
7 computer and so forth.

8 Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 Anything else to add, Mr. Elson?

11 **MR. ELSON:** Sorry, Your Honor. I was on mute. No,  
12 Your Honor. I'll submit on the briefings unless Your Honor  
13 has any direct issues that you'd like me to address.

14 **THE COURT:** I don't. Thank you very much.

15 All right. Well, thank you, all, for your briefing  
16 and your arguments. It is my intention to rule on this motion  
17 on the record today. So I will place my findings and  
18 conclusions on the record. The transcript of this hearing  
19 will serve as the record of my findings and conclusions, and I  
20 will not be entering a separate written order.

21 I'm going to jump right to these federal claims  
22 because they are the crux of this argument. The first is  
23 Count 8, violation of the Computer Fraud and Abuse Act, Title  
24 18 United States Code § 1030 et seq. It's asserted against  
25 all three defendants. This claim centers on Tilghman's

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1 retained company laptop, but I find this statute just doesn't  
2 cover this very local and limited situation that we have pled  
3 here.

4 This act was designed to outlaw conduct that  
5 victimizes computer systems. It's essentially a cyber  
6 security law that protects computers belonging to financial  
7 institutions or the Federal Government generally. For a  
8 computer to trigger a claim under this statute, it basically  
9 must belong to the Federal Government or be used in interstate  
10 or foreign commerce or communication or banking. There are no  
11 allegations in the complaint that would suggest that this  
12 computer was used in interstate or foreign commerce, and the  
13 plaintiffs haven't identified true facts they could allege  
14 that I think would satisfy this requirement.

15 I'm not persuaded by the argument that the computer  
16 was used in interstate or foreign commerce by virtue of the  
17 fact that it could connect to the Internet. Were that the  
18 case, every modern computer would be covered by this otherwise  
19 narrow act and supply federal jurisdiction to a wide swath of  
20 very local activity.

21 Plaintiffs argue that even if the computer itself  
22 doesn't qualify, the client and customer list do because the  
23 information there is about customers who receive benefits  
24 under a federal program implemented by the Division of Energy  
25 Employees Occupational Illness Compensation Program, and they

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1 claim that this is "restricted data" -- quotes around that  
2 term, restricted data -- which is a defined term under the  
3 Atomic Energy Act. They say that -- they argue that that is  
4 what it is protected under.

5 I find this is just too great a stretch here. The  
6 language of the statute simply does not support it. It also  
7 requires that the restricted data be communicated, quote,  
8 "with reason to believe that such information could be used to  
9 the injury of the United States, or to the advantage of any  
10 foreign nation." And these facts just don't even come close.  
11 So I grant the motion, and I dismiss Count 8.

12 The second federal claim is Count 10, alleging a  
13 violation of the Defend Trade Secrets Act, Title 18 United  
14 States Code § 1831 et seq.

15 This claim alleges that Tilghman took the plaintiffs'  
16 trade secrets for his own benefit and "potentially" -- in  
17 quotes, potentially -- the benefit of Partell and Advanced.  
18 This statute applies to trade secrets, quote, "related to a  
19 product or service used in, or intended for use in, interstate  
20 or foreign commerce." So it's not that the company has to be  
21 doing foreign commerce in some other way, like getting  
22 supplies through the stream of commerce or getting reimbursed  
23 through a stream of commerce. The focus is on whether the  
24 product or service is used in or intended for use in  
25 interstate or foreign commerce. That's the language of the

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1 statute. It's § 1836(b)(1). The plaintiffs have made no  
2 attempt to allege this nexus for their trade secrets and their  
3 product, and they have not demonstrated that they can if given  
4 leave to amend.

5 Their businesses are very local. They serve the  
6 local community. They do business as a local compounding  
7 pharmacy with a single Nevada location and a home health  
8 services company that services the local community. Although  
9 NSP is a Delaware company, the statute focuses on products,  
10 not entities. And even if NSP gets its compounding  
11 ingredients through interstate commerce, the trade secretes  
12 that it sues over aren't related to a product or service used  
13 in or intended for use in interstate or foreign commerce, as  
14 the statute requires. The trade secrets relate to the  
15 customer list and information.

16 The plaintiffs argue that because some of their  
17 clients are entitled to benefits through a federal program  
18 implemented by the Division of Energy Employees Occupational  
19 Illness Compensation Program, that provides the nexus needed.  
20 I don't find this argument persuasive because the products and  
21 services that the defendant -- or that the plaintiffs offer  
22 still aren't used in or intended to be used in interstate  
23 commerce. There's just no allegations to support that.  
24 There's no additional information provided in the oppositions  
25 that would support that. I find this to be essentially

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1 similar to the *Flores* case, that Hawaii case that counsel just  
2 read from during rebuttal and which is contained in the  
3 briefing.

4 So I dismiss this claim without prejudice but also  
5 without leave to amend because I can't conclude that, if given  
6 leave to amend, the plaintiffs could state true facts to  
7 support this nexus. The plaintiffs also have not offered a  
8 proposed amended complaint as Local Rule 15-I requires. But  
9 more importantly, they don't identify facts in their  
10 oppositions that would support leave to amend -- even liberal  
11 leave to amend as the Ninth Circuit requires.

12 So, in sum, I certainly give the plaintiffs' counsel  
13 credit for some novel and creative arguments and claims, but  
14 I'm afraid they just don't carry the day here. This appears  
15 to me to be a very state-law based case, and so I dismiss both  
16 of the federal claims that anchor this case here with federal  
17 question jurisdiction.

18 Having dismissed those federal claims, I turn to the  
19 state-law claims. Federal courts are courts of limited  
20 jurisdiction, and they may exercise supplemental jurisdiction  
21 over state-law claims that are, quote, "so related to claims  
22 in the action," end quote, that they form the same case or  
23 controversy with the claims over which the Court has  
24 jurisdiction. We know that that's 28 United States Code  
25 § 1337(a). But once a plaintiff's federal claims have been

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1                         dismissed, the Court may decline to exercise supplemental  
2 jurisdiction over remaining state-law claims under 28 United  
3 States Code § 1337(c)(4). And, in fact, in the Ninth Circuit  
4 case, *Harrell versus 20th Century Insurance Company*, the  
5 Ninth Circuit said it's generally preferable for a District  
6 Court to remand -- here it would be dismiss -- remaining  
7 supplemental jurisdiction claims so that they go back over to  
8 state court or go over to state court in the event that they  
9 started in Federal Court.

10                         And because I have dismissed both federal claims, I  
11 decline to exercise supplemental jurisdiction over the  
12 remaining state-law claims. So I dismiss them without  
13 prejudice to the plaintiffs' ability to refile them in state  
14 court.

15                         So I don't reach, as I don't need to reach, the  
16 remaining arguments in the parties' briefing.

17                         And, finally, I'm denying as moot the motion to stay  
18 discovery that is in the record at Number 34 because the  
19 dismissal of this case just moots that issue.

20                         Any questions? I'll ask plaintiffs' counsel first.

21                         **MS. KHEEL:** (Shakes head from side to side).

22                         No, Your Honor.

23                         **THE COURT:** Thank you.

24                         Defense counsel? Mr. Heaton?

25                         **MR. HEATON:** No, Your Honor. Thank you.

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1                   **THE COURT:** Mr. Elson?

2                   **MR. ELSON:** No, Your Honor. Thank you.

3                   **THE COURT:** All right. Thanks, everyone. Have a  
4 good day. We're adjourned.

5                   *(Proceedings adjourned at 11:34 a.m.)*

6                   --oo--

7                   COURT REPORTER'S CERTIFICATE

8  
9                   I, AMBER M. MCCLANE, Official Court Reporter, United  
10 States District Court, District of Nevada, Las Vegas, Nevada,  
11 do hereby certify that pursuant to 28 U.S.C. § 753 the  
12 foregoing is a true, complete, and correct transcript of the  
13 proceedings had in connection with the above-entitled matter.

14

15                   DATED: 10/21/2021

16

17

/s/   
AMBER MCCLANE, RPR, CRR, CCR #914

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UNITED STATES DISTRICT COURT  
Amber McLane, RPR, CRR, CCR #914

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